

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2005-050461

07/31/2006

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT  
T. Melius  
Deputy

REMO L L C

JARED O SMITH

v.

MOHAVE COUNTY, et al.

DOLORES H MILKIE

RON NICHOLSON  
P O BOX 7000  
KINGMAN AZ 86402

MINUTE ENTRY

11:07 a.m. This is the time set for telephonic Oral Argument on Defendants' Motion to Dismiss in this matter. Plaintiff is represented by counsel, Jared O. Smith. Defendants are represented by counsel, Dolores H. Milkie.

A record of the proceedings is made by CD/videotape in lieu of a court reporter.

Arguments are presented to the Court.

The Court having considered briefs and arguments of counsel finds and rules with respect of the two following issues:

1. The filing of Plaintiff's complaint is timely.
2. Plaintiff has no objection to the Dismissal of Ron Nicholson, therefore

**IT IS ORDERED** granting Defendants' Motion to Dismiss Ron Nicholson as a party in this action.

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**IT IS FURTHER ORDERED** denying Defendants' Motion to Dismiss this case as to the timeliness of Plaintiffs filing of its complaint.

**IT IS FURTHER ORDERED** taking under advisement the issue of whether service was timely.

11:26 a.m. Hearing concludes.

LATER:

Defendant's Motion to Dismiss has been under advisement. The Court finds and rules as follows.

The statute governing service in tax cases, A.R.S. § 42-16209, provides that notice of the appeal must be served within ten days. The courts have interpreted the statute to allow a waiver of this time limit where the plaintiff can show that lack of service was the result of excusable neglect. *Maricopa County v. Arizona Tax Court*, 162 Ariz. 64, 70 (App. 1989). Here, Plaintiff has offered no facts to establish excusable neglect, or for that matter any explanation at all for the belated service. *Ellman Land Corp. v. State*, 169 Ariz. 13 (Tax 1991), relied upon by Plaintiff, is inapposite. In that case, service was made on, as it turned out, an improper representative of Maricopa County; the court found the plaintiff's failure to serve the proper person excusable in light of the lack of clarity in the statute as to who must be served. *Id.* at 14. The statutory time limit, to the contrary, is clear: service must be made within ten days after filing or, unless excusable neglect is shown, the suit will be dismissed. *E.C. Garcia & Co., Inc. v. Dep't of Revenue*, 178 Ariz. 510, 515 (App. 1993). Here, Plaintiff did not serve Defendant within ten days of its Notice of Appeal, and has not shown excusable neglect. Therefore, IT IS ORDERED granting Defendant's Motion to Dismiss and dismissing this action with prejudice.